

Richard M. Lorenzen (Bar No. 006787)
PERKINS COIE LLP
2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2788
Email: RLorenzen@perkinscoie.com
Telephone: 602.351.8000
Facsimile: 602.648.7000

John S. Kaplan (*Pro Hac Vice*)
Eric J. Weiss (*Pro Hac Vice*)
Mallory Gitt Webster (*Pro Hac Vice*)
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Email: JKaplan@perkinscoie.com
Email: EWeiss@perkinscoie.com
Email: MWebster@perkinscoie.com
Telephone: 206.359.8000
Facsimile: 206.359.9408

Attorneys for Amazon Services LLC

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

POTENTIAL DYNAMIX LLC,

Debtor.

Case No. 2:11-bk-28944-DPC

Chapter 11

Adv. No. 2:13-ap-00799

TIMOTHY H. SHAFFER, Chapter 11
Trustee,

Plaintiff,

vs.

AMAZON SERVICES LLC,

Defendant.

**AMAZON SERVICES LLC's
MOTION FOR COSTS**

1 Pursuant to Federal Rule of Bankruptcy Procedure 7068 and Federal Rule of Civil
2 Procedure 68, Defendant Amazon Services LLC moves for the costs Amazon incurred after
3 it served on the Trustee an offer of judgment that the Trustee rejected and that was more
4 favorable than the judgment obtained by the Trustee.

5 * * *

6 On January 22, 2018, Amazon served on the Trustee an offer of judgment. Declara-
7 tion of Eric J. Weiss ISO Amazon's Mot. for Costs ("Weiss Decl.") ¶ 2 & Ex. A. Amazon's
8 offer allowed the Trustee "to take judgment against it in the sum of \$2,000,001.00," includ-
9 ing all taxable costs accrued through the date of the offer. *Id.* Ex. A at 3. The Trustee rejected
10 the offer of judgment by declining to accept it "within 14 days after being served." *Id.* ¶ 3;
11 *see also* Fed. R. Civ. P. 68(a).

12 On August 11, 2022, the Court entered judgment in favor of the Trustee. The judg-
13 ment includes \$332,806.00 in damages for breach of contract, \$668,484.00 in damages for
14 violation of the automatic stay, and \$294,218.74 in prejudgment interest.¹ DE 404 at 1–2.
15 The total judgment—\$1,295,508.74—is less favorable than the \$2,000,001.00 that Amazon
16 offered. *Compare id.*, with Weiss Decl. Ex. A at 3.

17 If a party defending against a claim makes a valid Rule 68 offer and "the judgment
18 that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree
19 must pay the costs incurred after the offer was made." Fed. R. Civ. P. 68(d). "The award is
20 mandatory; Rule 68 leaves no room for the court's discretion." *United States v. Trident*
21 *Seafoods Corp.*, 92 F.3d 855, 859 (9th Cir. 1996).

22 "The requirements for a valid Rule 68 offer are simple": the defendant must serve
23 an offer that allows the plaintiff to enter judgment for a definite sum, is unconditional, and
24 includes costs accrued by the plaintiff through the date of the offer. *Herrington v. Cnty. of*
25 *Sonoma*, 12 F.3d 901, 906 (9th Cir. 1993). Amazon made a valid Rule 68 offer by serving
26 on the Trustee an offer that allowed the Trustee to take judgment against Amazon in the

27
28 ¹ \$294,218.74 is the interest that accrued on the Trustee's \$332,806 in damages for breach
of contract at a rate of 12% between April 1, 2015, and August 11, 2022.

1 definite sum of \$2,000,001.00 without condition and inclusive of “all taxable costs accrued
2 through the date of” the offer of judgment. Weiss Decl. ¶ 2 & Ex. A.

3 Because Amazon made a valid Rule 68 offer that was more favorable than the judg-
4 ment the Trustee obtained, Rule 68(d) obligates the Trustee to pay Amazon’s “standard
5 post-offer costs (i.e., costs excluding attorneys’ fees).” *Champion Produce, Inc. v. Ruby*
6 *Robinson Co., Inc.*, 342 F.3d 1016, 1026 (9th Cir. 2003). Standard post-offer costs are those
7 outlined in 28 U.S.C. §§ 1920 and 1923. *Moskowitz v. Am. Savings Bank, F.S.B.*, 37 F.4th
8 538, 543 (9th Cir. 2022) (“‘Costs’ is a term which has a long-standing definition: the items
9 which are listed in 28 U.S.C. §§ 1920, 1923.”). Amazon incurred \$41,438.24 in standard
10 post-offer costs, which are detailed in the verified cost statement (bill of costs), itemization,
11 receipts, and invoices that are attached to the accompanying Declaration of Eric J. Weiss.

12
13 Dated: August 22, 2022

By: s/ Eric J. Weiss

Richard M. Lorenzen (Bar No. 006787)

John S. Kaplan (*Pro Hac Vice*)

Eric J. Weiss (*Pro Hac Vice*)

Mallory Gitt Webster (*Pro Hac Vice*)

Attorneys for Amazon Services LLC

1 **CERTIFICATE OF SERVICE**

2 On this date I caused to be served on each of the attorneys identified below, via the
3 delivery methods indicated below, a copy of the foregoing document, as follows:

4
5 Dale C. Schian X Via the Clerk's eFiling Application
6 Mark C. Dangerfield _____ Via U.S. Mail, 1st Class
7 Kenneth N. Ralston _____ Via Overnight Delivery
8 **GALLAGHER & KENNEDY, P.A.** _____ Via Facsimile
9 2575 East Camelback Road X Via Email
10 Phoenix, AZ 85016-9225 _____ Other: _____
11 dale.schian@gknet.com
12 mark.dangerfield@gknet.com
13 ken.ralston@gknet.com

14 *Attorneys for Chapter 11 Trustee*

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Dated: August 22, 2022

s/ Eric J. Weiss _____